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20 **UNITED STATES DISTRICT COURT**
21 **DISTRICT OF NEVADA**

22 VSOLVIT, LLC, a Nevada limited liability
23 company

Case Number 2:23-cv-00454-JAD-DJA

24 Plaintiff,

25 **PLAINTIFF'S, VSOLVIT, LLC,
26 OPPOSITION TO DEFENDANTS'
27 MOTION TO DISMISS AMENDED
28 COMPLAINT (ECF NO. 44)**

v.

SOHUM SYSTEMS, LLC, and CREATIVE
INFORMATION TECHNOLOGY, INC., a
Maryland corporation

Defendants.

1 Plaintiff, VSolvit, LLC (“Plaintiff” or “VSolvit”), by counsel, files this Opposition
2 (“Opposition”) to Defendants’, Sohum Systems, LLC (“Sohum”) and Creative Information
3 Technology, Inc. (“CITI”) (collectively, “Defendants”), Motion to Dismiss Counts I and II
4 of the Amended Complaint (“Amended Complaint”) (ECF No. 44) (the “Motion”), and
5 respectfully requests that this Honorable Court deny the Motion in its entirety. As grounds
6 therefor, Plaintiff states as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court previously determined that VSolvit is likely to succeed on the merits of its breach of contract claims against Defendants, because Defendants were bound by a negotiated exclusivity provision in the parties' Teaming Agreement for a federal government contract. ECF No. 33 at 6-8. Despite the Court's ruling, Defendants continued to breach their Teaming Agreement by competing against Plaintiff for the contract. ECF No. 44 ¶¶ 109-124. The result of that breach was for Defendants to win the federal contract in question, although the award was subsequently vacated after VSolvit challenged the award due to procurement irregularities. *Id.* ¶¶ 115-122. The government intends to re-procure the contract, through a "new procurement process." *Id.* ¶ 124. VSolvit continues to suffer the damages caused by Defendants' egregious contractual breaches. However, Defendants now attempt to skirt liability by claiming Plaintiff cannot prove causation or damages. These arguments are contrary to the well-settled motion to dismiss standard and the facts pled in the Amended Complaint and they are patently incorrect under Nevada law. Indeed, they find no support in the record or reality and represent the thinnest of reeds on which to balance a request for dismissal. This Court must resoundingly reject Defendants' arguments and deny the Motion in its entirety.

II. STATEMENT OF FACTS

26 This matter arises from a dispute between government contracting partners. *Id.* ¶ 1.
27 VSolvit, Sohum, and CITI were incumbent performers on two task orders issued by the
28 United States Department of Agriculture (“USDA”). *Id.* ¶ 36. In June 2023, USDA issued

1 USDA FPAC Farm Programs Software Delivery (“Beech”), a separate task order
 2 procurement opportunity that sought to combine the task orders the parties were presently
 3 performing. *Id.* As the task orders they held had become important to the Parties’ businesses,
 4 VSolvit, Sohum, and CITI entered into a teaming agreement (“Teaming Agreement”) for the
 5 purpose of retaining, and taking on more of, that work. *Id.* ¶¶ 43-45; ECF No. 44-1.

6 In the Teaming Agreement, the parties agreed “VSolvit may, at its sole discretion,
 7 designate itself . . . as the prime contractor for the pursuit of the Program . . .” and that
 8 Sohum and CITI shall act as VSolvit’s first-tier subcontractors. ECF No. 44 ¶ 46; ECF No.
 9 44-1 §§ 1.1, 1.2. That VSolvit had the right to designate itself as the parties’ Prime offeror
 10 was “critical” since it empowered VSolvit to “maintain control over its workshare” for
 11 Beech, which “it was not able to do when CITI was Prime” for the two prior task orders.
 12 ECF No. 44 ¶¶ 48, 51.

13 The parties also agreed to be exclusive partners for the Beech work. ECF No. 44 ¶¶
 14 49-50; ECF No. 44-1 § 1.3. Indeed, the parties expressly agreed as follows: “Under this
 15 Agreement, [Defendants] and [Plaintiff] commit to an exclusive agreement for [Defendants]
 16 to support [Plaintiff].” ECF No. 44 § 50; ECF No. 44-1 § 1.3. Defendants further agreed that
 17 they would not act as a prime offeror, had not teamed with other offerors, and would not
 18 team in the future with other offerors, regarding the Program. *Ibid.* Sohum and CITI also
 19 agreed that, “as a material condition under this Agreement,” they would not “compete
 20 directly or indirectly as a teammate or otherwise participate in proposal activities or capture
 21 activities for renewals, options or natural follow-on business to [VSolvit’s] Prime Contract
 22 . . .” *Ibid.*

23 Unfortunately, that benefit was not realized, as Defendants unilaterally terminated
 24 the Teaming Agreement on February 9, 2023 (after VSolvit provided them with its
 25 confidential and proprietary information and trade secrets) and, thereafter, competed against
 26 VSolvit for Beech by submitting an independent proposal to USDA. ECF No. 44 ¶¶ 61-62,
 27 66-68, 78-79. Later that year, USDA identified the VSolvit team and Defendants’ team as
 28 the top two offerors for Beech. *Id.* ¶¶ 111-13.

1 VSolvit and Defendants were the only teams to advance to the final phase of the
 2 Beech procurement process. *Id.* ¶¶ 111-12, 114. That makes it “unmistakable that the
 3 VSolvit team contemplated by the Agreement (i.e., VSolvit as Prime with Sohum and CITI
 4 as subcontractors) would have won the Beech award if not for Sohum’s and CITI’s breach
 5 of their exclusivity obligations set forth in the [Teaming] Agreement.” *Id.* ¶ 113. USDA
 6 chose between its two options (the VSolvit team and the Sohum-CITI team) and selected the
 7 Sohum-CITI team as the awardee for Beech. *Id.* ¶ 115.

8 VSolvit then protested that award due to procurement irregularities. *Id.* ¶ 116. That
 9 protest “resulted in a stay of the award to the Sohum-CITI team.” *Id.* ¶ 117. On January 9,
 10 the USDA took corrective action to resolve VSolvit’s protest. *Id.* ¶ 119. This reopened the
 11 procurement process and “permitted offerors to submit new price proposals and participate
 12 in new oral presentations.” *Id.* After corrective action was taken, USDA again awarded
 13 Beech to Defendants. *Id.* ¶ 120. VSolvit again protested due to procurement irregularities.
 14 *Id.* ¶ 121. On March 23, 2024, USDA issued a further Notice of Corrective Action in
 15 response to VSolvit’s protest, stating that it intended to cancel the Beech solicitation for
 16 purposes of re-evaluating the agency’s contract requirements. *Id.* ¶ 122. A few months later,
 17 in July 2024, “USDA notified VSolvit that it intends to procure the Beech project through a
 18 new procurement process.” *Id.* ¶ 124.

19 **III. STANDARD OF REVIEW**

20 **a. Subject-Matter Jurisdiction**

21 Defendants challenge this Court’s subject-matter jurisdiction claiming that Plaintiff’s
 22 claims in Counts I and II are moot. ECF No. 45 at 12-14. Motions to dismiss for lack of
 23 subject-matter jurisdiction are pursued under Federal Rule of Civil Procedure 12(b)(1). *See,*
 24 *e.g., Ass’n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778 (9th Cir. 2000). “A
 25 Rule 12(b)(1) jurisdictional attack may be facial or factual.” *Safe Air for Everyone v. Meyer*,
 26 373 F.3d 1035, 1039 (9th Cir. 2004) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.
 27 2000) (citation omitted)). “In a facial attack, the challenger asserts that the allegations
 28 contained in a complaint are insufficient on their face to invoke federal jurisdiction. By

1 contrast, in a factual attack, the challenger disputes the truth of the allegations that, by
2 themselves, would otherwise invoke federal jurisdiction.” *Id.* Defendants do not identify
3 whether they are proceeding via a facial or factual attack. ECF No. 45 at 12-14. Although
4 they attach three exhibits to the Motion, those exhibits merely memorialize factual
5 allegations included in the Amended Complaint, and Defendants do not rely on the exhibits
6 to establish or contradict any factual allegation. *See generally* ECF No. 45. Given the
7 framing of the Motion, Defendants appear to be making a facial attack.

8 The manner in which the jurisdictional challenge is asserted affects its resolution. *Id.*
9 “In a facial attack, the challenger asserts that the allegations contained in a complaint are
10 insufficient on their face to invoke federal jurisdiction.” *Wright v. Incline Village Gen.*
11 *Improvement Dist.*, 597 F. Supp. 2d 1191, 1198 (D. Nev. 2009) (quoting *Safe Air for*
12 *Everyone*, 373 F.3d at 1039). “When considering a ‘facial’ attack . . . a court must consider
13 the allegations of the complaint to be true and construe them in the light most favorable to
14 the plaintiff.” *Whitehorn v. F.C.C.*, 235 F. Supp. 2d 1092, 1095 (D. Nev. 2002) (citing *Love*
15 *v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989), *abrogated on other grounds by*
16 *DaVinci Aircraft, Inc. v. United States*, 926 F.3d 1117 (9th Cir. 2019)). Unlike with a facial
17 attack, “[i]n resolving a factual attack on jurisdiction, the district court may review evidence
18 beyond the complaint without converting the motion to dismiss into a motion for summary
19 judgment . . .” *Safe Air for Everyone*, 373 F.3d at 1039 (citing *Savage v. Glendale Union*
20 *High Sch.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003) (citing *White*, 227 F.3d at 1242)).
21 “Once the moving party has converted the motion to dismiss into a factual motion by
22 presenting affidavits or other evidence properly brought before the court, the party opposing
23 the motion must furnish affidavits or other evidence necessary to satisfy its burden of
24 establishing subject matter jurisdiction.” *Id.* (citing *Savage*, 343 F.3d at 1039 n.2). “[N]o
25 presumptive truthfulness attaches to plaintiff’s allegations [on a factual attack], and the
26 existence of disputed material facts will not preclude the trial court from evaluating for itself
27 the merits of jurisdictional claims.” *Whitehorn*, 235 F. Supp. 2d at 1096 (quoting *Thornhill*
28

1 *Pub. Co., Inc. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979) (quoting
 2 *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977))).

3 That said, “[t]he relatively expansive standards of a 12(b)(1) motion are not
 4 appropriate for determining jurisdiction . . . where issues of jurisdiction and substance are
 5 intertwined.” *Roberts v. Carrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987) (citations omitted).
 6 “A court may not resolve genuinely disputed facts where ‘the question of jurisdiction is
 7 dependent on the resolution of factual issues going to the merits.’” *Id.* (quoting *Augustine v.
 8 United States*, 704 F.2d 1074, 1077 (9th Cir. 1983)). “In such a case, ‘the jurisdictional
 9 determination should await a determination of the relevant facts on either a motion going to
 10 the merits or at trial.’” *Id.* (quoting *Augustine*, 704 F.2d at 1077) (citations omitted).

11 **b. Failure to State a Claim**

12 Defendants also contend that the Amended Complaint should be dismissed for
 13 failure to state a claim upon which relief could be granted. Such motions are considered
 14 under Federal Rule of Civil Procedure 12(b)(6). *Wensley v. First Nat'l Bank of Nev.*, 874 F.
 15 Supp. 2d 957, 962 (D. Nev. 2012). The purpose of a Rule 12(b)(6) motion is to “test the
 16 legal sufficiency of a complaint[,]” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001), not
 17 to “resolve contests surrounding the facts, the merits of a claim, or the applicability of
 18 defenses.” *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016). Accordingly, “there is a
 19 strong presumption against dismissing an action for failure to state a claim.” *Angel v.
 20 Eldorado Casino, Inc.*, No. 3:07-cv-00503-BES-VPC, 2008 WL 1914330, at *1 (D. Nev.
 21 Apr. 25, 2008) (citing *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997)
 22 (citation omitted)).

23 Ultimately, a complaint fails to state a claim if it does not contain “a short and plain
 24 statement of the claim showing that the pleader is entitled to relief,” FED. R. CIV. P. 8(a)(2),
 25 and/or does not “state a claim to relief that is plausible on its face,” *Ashcroft v. Iqbal*, 556
 26 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A
 27 claim is facially plausible “when the plaintiff pleads factual content that allows the court to
 28 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

1 (citing *Twombly*, 550 U.S. at 556).

2 When evaluating the sufficiency of a plaintiff's claims under Rule 12(b)(6), “[t]he
 3 Court is obliged to ‘accept[] all factual allegations in the complaint as true and constru[e]
 4 them in the light most favorable to the [plaintiff].’” *Wilson v. Craver*, 994 F.3d 1085, 1089-
 5 90 (9th Cir. 2021) (quoting *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1014 (9th
 6 Cir. 2012)). A complaint must survive dismissal if the factual allegations therein are
 7 sufficient to “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. It
 8 is inappropriate to grant a motion to dismiss for failure to state a claim unless the Court finds
 9 it “‘clear that no relief could be granted under any set of facts that could be proved
 10 consistent with the allegations.’” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002)
 11 (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)); *see also Volvo Constr. Equip.
 12 Rents, Inc. v. NRL Rentals, LLC*, No. 2:09-cv-00032-JCM-VCF, 2012 WL 27615, at *1 (D.
 13 Nev. Jan. 3, 2012) (citations omitted) (same).

14 **IV. ARGUMENT**

15 **a. Counts I and II are Not Moot**

16 Defendants first challenge the Court’s subject-matter jurisdiction over this action,
 17 claiming that Counts I and II are moot. ECF No. 45 at 12-14. Defendants attempt a number
 18 of misguided arguments to try to claim mootness, including that: the Teaming Agreements
 19 are terminated because the Beech Solicitation was canceled and will be reprocured under a
 20 new contract vehicle and the Teaming Agreements themselves have “timed out”; and the
 21 cancelation of the Beech Solicitation means the subject matter of the suit has “gone away.”
 22 *Id.* Notably, beyond an introduction that includes broad references to general provisions of
 23 black letter law to establish that federal courts do not consider moot claims, Defendants are
 24 unable to cite to a single case, from anywhere in the country, to support their argument. *Id.*
 25 All of Defendants’ arguments misunderstand Nevada law, misconstrue the Amended
 26 Complaint, and over-generalize the issues. The Amended Complaint is well-pled and
 27 Plaintiff’s claims are not moot; the Motion must be denied as a result.

1 “Article III, § 2, of the Constitution limits the jurisdiction of federal courts to ‘Cases’
 2 and ‘Controversies,’ which restricts the authority of federal courts to resolving the legal
 3 rights of litigants in actual controversies.” *Genesis Healthcare Corp. v. Smyczyk*, 569 U.S.
 4 66, 71 (2013) (internal quotation marks omitted) (quoting *Valley Forge Christian Coll. v.*
 5 *Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464, 471 (1982) (quoting
 6 *Liverpool, N.Y. & Phila. S.S. Co. v. Comm’rs of Emigration*, 113 U.S. 33, 39 (1885))). “A
 7 corollary to this case-or-controversy requirement is that an actual controversy must be extant
 8 at all stages of review, not merely at the time the complaint is filed.” *Id.* (internal quotation
 9 marks omitted) (quoting *Arizonans for Off. English v. Arizona*, 520 U.S. 43, 67 (1997)
 10 (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975))). “If an intervening circumstance
 11 deprives the plaintiff of a ‘personal stake in the outcome of the lawsuit,’ at any point during
 12 litigation, the action can no longer proceed and must be dismissed as moot.” *Id.* (quoting
 13 *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-78 (1990)). Ultimately, a “case is moot
 14 when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest
 15 in the outcome.” *Clark v. City of Lakewood*, 259 F.3d 996, 1011 (9th Cir. 2001) (internal
 16 quotation marks omitted) (quoting *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 287 (2000)). “If
 17 there is no longer a possibility that [a party] can obtain relief for his claim, that claim is
 18 moot” *Foster v. Carson*, 347 F.3d 742, 746 (9th Cir. 2003). However, “a case is not
 19 moot where *any* effective relief may be granted.” *Forest Guardians v. Johanns*, 450 F.3d
 20 455, 461 (9th Cir. 2006) (citing *Nw. Env’t Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244 (9th
 21 Cir. 1988)).

22 “The Supreme Court has emphasized that the doctrine of mootness is more flexible
 23 than other strands of justiciability doctrine.” *Karuk Tribe of Cal. v. United States Forest*
 24 *Serv.*, 681 F.3d 1006, 1017 (9th Cir. 2012) (citing *Jacobus v. Alaska*, 338 F.3d 1095, 1103
 25 (9th Cir. 2003)). Thus, the party asserting mootness bears a “heavy burden” of “establishing
 26 that there is no effective relief that the court can provide.” *Forest Guardians*, 450 F.3d at
 27 461 (citing *S. Or. Barter Fair v. Jackson Cnty.*, 372 F.3d 1128, 1134 (9th Cir. 2004); *Nw.*
 28 *Env’t Def. Ctr.*, 849 F.2d at 1244). When commenting on the mootness doctrine, the

1 Supreme Court has emphasized just how forgone the prospect of relief must be before a
 2 court may dismiss on mootness grounds, stating: “as long as the parties have a concrete
 3 interest, however small, in the outcome of the litigation, the case is not moot.” *Knox v.*
 4 *Serv. Emp. Int’l Union, Loc. 1000*, 567 U.S. 298, 307-08 (2012) (quoting *Ellis v. Ry. Clerks*,
 5 466 U.S. 435, 442 (1984)).

6 Defendants fail to establish that VSolvit’s contractual claims are moot. Defendants’
 7 primary argument is that “the subject matter of the Agreement—the Beech Program—has
 8 gone away” following the USDA’s decision to cancel the Beech procurement and reprocure
 9 the work through a different contract vehicle. ECF No. 45 at 13-14. In Defendants’ eyes,
 10 “[t]he cancellation of the Beech Solicitation obviates the purpose of the parties’ agreement
 11 and makes it impossible for VSolvit to prove damages, because there will be no comparable
 12 replacement subcontract [sic].” *Id.* at 14. Defendants further argue that “[w]ith the
 13 termination of the Beech solicitation, any future solicitation of the work would be a new
 14 unique procurement that was not included or anticipated by the parties” *Id.* Defendants
 15 also suggest that Counts I and II are moot because the Teaming Agreements between
 16 Plaintiff and Defendants have been terminated, because “the Agency has canceled the Beech
 17 Solicitation”; “[t]he Agency . . . has announced its intention to procure the Beech scope of
 18 work through a ‘new procurement process’”; and the Teaming Agreements have “timed
 19 out,” *i.e.*, “more than two years have elapsed after the effective date of the Agreement
 20 without the award of a Prime Contract under Beech.” *Id.* at 13. Defendants are wrong on all
 21 counts.

22 On June 13, 2022, the parties entered into an exclusive Teaming Agreement for the
 23 pursuit of the Beech procurement. ECF No. 44 ¶ 45; ECF No. 44-1 § 1.3. The Teaming
 24 Agreement defined the “Program” as “a Solicitation No. TBD . . . for the acquisition of
 25 USDA FPAC Beech” ECF No. 44-1 at 1. The Amended Complaint describes that
 26 Program in greater detail as USDA FPAC (Farm Production and Conservation) Farm
 27 Programs Software Delivery. ECF No. 44 ¶ 34. “Beech was a consolidation of several
 28 existing task orders, including two task orders previously being performed by VSolvit and

1 the Defendants[,]” *i.e.*, CITI’s “PARMO” contract. *Id.* ¶¶ 36-42. The purpose of the
 2 Teaming Agreements was for the parties to work together to keep the PARMO work they
 3 already had after the expiration of CITI’s PARMO contract. *Id.* ¶¶ 43-44.

4 The parties agreed to “commit to an exclusive agreement for [Defendants] to support
 5 [Plaintiff].” *Id.* ¶ 50; ECF No. 44-1 § 1.3. Defendants expressly agreed that they would not
 6 act as a Prime offeror and would not team with any other contractors (other than Plaintiff) to
 7 pursue the Beech procurement Program. *Ibid.* As this Court has previously determined in
 8 this case, these exclusivity provisions survive termination of the Teaming Agreement. ECF
 9 No. 33 at 7 (“At this stage I find that VSolvit’s argument that the exclusivity clause of the
 10 contract survived termination has a likelihood of success on the merits, such that the
 11 defendants’ obligation not to ‘enter into any teaming arrangements with other offerors under
 12 the program after this Agreement’ would remain in effect.”) (citing *Fed. Nat'l Mortg. Ass'n v. Westland Liberty Village, LLC*, 515 P.3d 329, 334 (Nev. 2022)).

14 Even after the Court noted that Defendants intended to bid on Beech “in a manner
 15 that would violate the exclusivity clause[.]” Defendants continued to pursue Beech together,
 16 without VSolvit, breaching the Teaming Agreement. ECF No. 44 ¶¶ 110-115. And that
 17 breach caused VSolvit damages. *Id.* ¶¶ 113, 127, 138, 152. These damages include the “loss
 18 of the Beech contract and all revenues and profits associated therewith, the costs associated
 19 with all bid protests (including attorneys’ fees incurred to resolve the agency’s incorrect and
 20 unlawful award to the Sohum-CITI team), and other damages.” *Id.* ¶ 127.

21 The lost profits from the Beech contract are recoverable in this action. As noted in
 22 the Amended Complaint, both VSolvit and Defendants submitted separate bids in response
 23 to the Beech procurement. *Id.* ¶¶ 109-110. Those two teams were the only bidders whose
 24 proposals were of sufficient quality to advance to the second phase of the procurement
 25 process. *Id.* ¶¶ 111-112. “Because the VSolvit team and the Sohum-CITI team were the top
 26 two ranked teams for the Beech procurement, it is unmistakable” and an abundantly
 27 reasonable inference drawn from the facts, “that the VSolvit team contemplated by the
 28 [Teaming] Agreement (*i.e.*, VSolvit as Prime with Sohum and CITI as subcontractors)

1 would have won the Beech award” absent Defendants’ breach. *Id.* ¶ 113. Indeed, there is no
 2 reasonable basis to believe Defendants’ conjecture, unsupported by evidence, that the USDA
 3 might have awarded a contract to any other contractor besides the team made up of the #1
 4 and #2 ranked offerors. Thus, if Defendants had met their exclusivity obligations under the
 5 Teaming Agreements, the VSolvit team would have won the award of the Beech contract;
 6 Defendants’ breach therefore caused Plaintiff damages associated with the loss of that
 7 contract. *Id.* ¶¶ 113, 127.

8 Defendants’ argument that Counts I and II of the Amended Complaint should be
 9 dismissed because any damages Plaintiff allegedly suffered associated with the loss of the
 10 Beech contract are speculative is inappropriate for resolution at this stage of the case. Such
 11 an argument will depend on factual development through discovery. *Guanci v. Kessler*, No.
 12 2:14-cv-01299-APG-GWF, 2015 WL 442587, at *3 n.18 (D. Nev. July 17, 2015) (citing
 13 *Enigma Info. Retrieval Sys., Inc. v. Radian, Inc.*, No. CIV.A. 04C06069FSS, 2005 WL
 14 445568, at *3 (Del. Super. Feb. 23, 2005) (rejecting argument that damages are speculative
 15 at motion to dismiss stage because issue is one for trial or summary judgment); *NGV*
 16 *Gaming, Ltd. v. Upstream Point Malate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005)
 17 (“however difficult it might be to prove damages at trial, ultimately this is a question of fact
 18 subject to proof, and is inappropriate to support this motion to dismiss”), *disapproved in*
 19 *later proceedings on other grounds sub nom. Guidiville Band of Pomo Indians v. NGV*
 20 *Gaming Ltd.*, No. C 04-3955-SC, C 05-1605-SC, 2005 WL 5503031 (N.D. Cal. Oct. 19,
 21 2005), *reversed in part, vacated in part on other grounds*, 531 F.3d 767 (9th Cir. 2008)); *see also*
 22 *Grp. Health Plan, Inc. v. Philip Morris, Inc.*, 68 F. Supp. 2d 1064, 1071 (D. Minn.
 23 1999) (rejecting dismissal based on argument that damages were “completely ‘dependent
 24 upon the hypothetical actions of third-parties’” and therefore speculative because
 25 speculative damages argument required factual development). To dismiss at this stage would
 26 require the Court to resolve genuinely disputed facts that go to the merits of Plaintiff’s
 27 claims; this, the Court cannot do. *Roberts*, 812 F.2d at 1177; *Augustine*, 704 F.2d at 1077.

1 Defendants' argument that dismissal is appropriate because "an objective review of
 2 the facts (or the pleaded allegations) shows that it was VSolvit's multiple protests of USDA
 3 actions that caused the cancelation of the Program" fails for a similar reason. ECF No. 45 at
 4 13-14. While it is true that VSolvit filed bid protests of the USDA's award to the Sohum-
 5 CITI team due to irregularities in the selection process, ECF No. 44 ¶ 116, that was
 6 Plaintiff's right as a disappointed offeror on a federal procurement, *Raymond Express Int'l,
 7 LLC v. United States*, 120 Fed. Cl. 413, 422 (2015) (any interested party "whose direct
 8 economic interest in the procurement has been prejudiced by the government's actions has
 9 standing" to bring a bid protest). The bid protest process (which twice caused the
 10 Government to vacate the award to Sohum to correct its mistakes), ECF No. 44 ¶¶ 119-122,
 11 also served as VSolvit's effort to mitigate its damages, *see Mason v. Artworks Pictures,
 12 LLC*, No. 03:03-CV-00188-LRH-VPC, 2008 WL 2486029, at *5 (D. Nev. June 12, 2008)
 13 ("While there is no legal 'duty' to mitigate damages in a breach of contract action, . . . a
 14 plaintiff may not recover for losses which it was possible to mitigate.") (citations omitted).
 15 Defendants' Motion asks this Court to resolve the question of the cause of Plaintiff's
 16 damages at the motion to dismiss stage; however, causation is a question of fact
 17 inappropriate for resolution at the motion to dismiss stage. *See Tahoe Sierra Pres. Council,
 18 Inc. v. Tahoe Reg'l Plan. Agency*, 34 F.3d 753, 756 (9th Cir. 1994) ("a question of causation
 19 is preeminently a question of fact, to be decided after trial.") (citing *Lies v. Farrell Lines,
 20 Inc.*, 641 F.2d 765, 770 (9th Cir. 1981)).

21 The attorneys' fees incurred in the bid protest litigation are also recoverable under
 22 Nevada law as an element of damages. Indeed, attorneys' fees are a "recoverable element of
 23 damages . . . 'when a party claims it has incurred attorney fees as foreseeable damages
 24 arising from tortious conduct or a breach of contract . . .'" *Mitchell v. Nype*, 517 P.3d 905,
 25 at *3 (Nev. Sept. 23, 2022) (quoting *Sandy Valley Assocs. v. Sky Ranch Ests. Owners Ass'n*,
 26 35 P.3d 964, 969 (Nev. 2001), *receded from on other grounds by Horgan v. Helton*, 170
 27 P.3d 982 (2007), and *Liu v. Christopher Homes, LLC*, 321 P.3d 875 (2014)). Nevada law
 28 also allows for the recovery of attorneys' fees "incurred in mitigation activities . . .".

1 *Women's Fed. Sav. & Loan Ass'n of Cleveland v. Nev. Nat'l Bank*, 607 F. Supp. 1129, 1136
 2 (D. Nev. 1985), *rev'd on other grounds*, 811 F.2d 1255 (9th Cir. 1987) (citing *Am. Fed. of*
 3 *Musicians v. Reno's Riverside Hotel, Inc.*, 475 P.2d 220, 222 (Nev. 1970), *disapproved of*
 4 *on other grounds by Sandy Valley Assocs.*, 35 P.3d 964).

5 Even if this Court were to rule that neither the lost profits from the Beech
 6 procurement, nor the attorneys' fees from the bid protest matters, are recoverable, Plaintiff
 7 would still have a valid breach of contract claim under Nevada law and could recover, at a
 8 minimum, nominal damages. *Gramanz v. T-Shirts & Souvenirs, Inc.*, 894 P.2d 342, 343, 347
 9 (Nev. 1995) (where a plaintiff offers insufficient evidence to determine a reasonably
 10 accurate damage award, the plaintiff is "entitled only to nominal damages"); *Wade v. Univ.*
 11 *Med. Ctr. of S. Nev.*, Case No. 2:18-cv-1927-RFB-EJY, 2023 WL 9598746, at *5 (D. Nev.
 12 Feb. 13, 2023) ("In a contract action, if a plaintiff cannot show actual damages flowing from
 13 the breach of contract, she is entitled to nominal damages."); *Martin v. Clark Cnty.*, Case
 14 No. 2:19-cv-01623-APG-DJA, 2022 WL 16964649, at *1 (D. Nev. Nov. 15, 2022) ("If a
 15 party in a breach of contract action cannot show actual damages, then it may recover only
 16 nominal damages.") (citations omitted). Thus, regardless of the mechanism of termination of
 17 the Teaming Agreement, Plaintiff has "a concrete interest, however small, in the outcome
 18 of the litigation," and the Court must not find it moot. *Knox*, 567 U.S. at 307-08 (quoting
 19 *Ellis*, 466 U.S. at 442). Indeed, as the Ninth Circuit has explained, "[a] live claim [even] for
 20 nominal damages will prevent dismissal for mootness." *Bayer v. Neiman Marcus Grp., Inc.*,
 21 861 F.3d 853, 868 (9th Cir. 2017) (quoting *Bernhardt v. Cnty. of Los Angeles*, 279 F.3d 862,
 22 872 (9th Cir. 2002)).

23 **b. The Amended Complaint States Claims for Breach of Contract and**
 24 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

25 Defendants next argue, incorrectly, that Counts I and II of the Amended Complaint
 26 must be dismissed because Plaintiff cannot prove the causation or damages elements of
 27 Plaintiff's contract-related claims. "Under Nevada law, 'the plaintiff in a breach of contract
 28 action [must] show (1) the existence of a valid contract, (2) a breach by the defendant, and

1 (3) damage as a result of the breach.” *Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 899
 2 (9th Cir. 2013) (quoting *Saini v. Int’l Game Tech.*, 434 F. Supp. 2d 913, 919-20 (D. Nev.
 3 2006) (other citation omitted)). Meanwhile, the elements of Plaintiff’s breach of the implied
 4 covenant of good faith and fair dealing claim are: (1) the plaintiff and defendant were parties
 5 to a contract; (2) the defendant owed a duty of good faith and fair dealing to plaintiff; (3) the
 6 defendant breached that duty by performing in a manner unfaithful to the contract’s purpose;
 7 and (4) the plaintiff was denied its justified expectations from the contract. *Eagle SPE NV I,
 8 Inc. v. S. Highlands Dev. Corp.*, 36 F. Supp. 3d 981, 990 (D. Nev. 2014) (citing *Perry v.
 9 Jordan*, 900 P.2d 335, 338 (Nev. 2008)). Defendants’ arguments fail on the facts and under
 10 the motion to dismiss standard of review.

11 **1. Plaintiff Properly Pleads Causation**

12 Defendants’ contention that the Amended Complaint fails to sufficiently allege
 13 causation is both inappropriate for the Court to resolve at this stage of the case and incorrect
 14 under the motion to dismiss standard. As a threshold matter, it is well-settled and often
 15 repeated that Nevada law regards “[c]ausation [to be] . . . a question for the finder of fact
 16” *Frantz v. Johnson*, 999 P.2d 351, 359 (Nev. 2000) (citing *Hermann Tr. v. Varco-*
 17 *Pruden Bldgs.*, 796 P.2d 590, 591-92 (Nev. 1990); *Frances v. Plaza Pac. Equities*, 847 P.2d
 18 722, 724 (Nev. 1993)); *see also Liu v. Christopher Homes, LLC*, 321 P.3d at 881
 19 (“Determining whether a party’s breach of contract caused another party to incur attorney
 20 fees in defending himself or herself from a third party’s complaint involves factual
 21 inquiries.”) (citing *Frantz*, 999 P.2d at 359). Questions of fact, such as causation, “cannot be
 22 resolved or determined on a motion to dismiss for failure to state a claim upon which relief
 23 can be granted.” *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc.*, 911 F.2d 242,
 24 245 (9th Cir. 1990) (citing *Rennie & Laughlin, Inc. v. Chrysler Corp.*, 242 F.2d 208, 212
 25 (9th Cir. 1957)). The issue of causation may only be resolved on a motion to dismiss where
 26 “no reasonable juror would dispute its absence.” *Contreras v. Am. Fam. Mut. Ins. Co.*, 135
 27 F. Supp. 3d 1208, 1228 (D. Nev. 2015) (citations omitted). Defendants do not suggest they
 28

1 can meet that standard here, ECF No. 45, at 15-18; indeed, they cannot, and Defendants'
 2 Motion must be denied.

3 Should the Court nonetheless entertain Defendants' misguided challenge, the
 4 Amended Complaint sufficiently alleges causation under the motion to dismiss review
 5 standard. As noted above, on a motion to dismiss, “[t]he Court is obliged to ‘accept[] all
 6 factual allegations in the complaint as true and constru[e] them in the light most favorable to
 7 the [plaintiff].’” *Wilson*, 994 F.3d at 1089-90 (quoting *Skilstaf*, 669 F.3d at 1014). Further,
 8 all reasonable inferences drawn from those allegations must be construed in Plaintiff’s
 9 favor—“not only those that support his claim, but also those that defeat [a] defense.” *Perez*
 10 *v. Daniels*, Case No. 2:21-cv-02061-CDS-MDC, 2024 WL 1377109, at *4 (D. Nev. Mar. 31,
 11 2024) (quoting *McDaniel v. Diaz*, Case No. 1:20-cv-00856-NONE-SAB, 2021 WL 147125,
 12 at *10 (E.D. Cal. Jan. 15, 2021), *report and recommendation adopted*, 2021 WL 806346
 13 (E.D. Cal. Mar. 3, 2021) (citing *McKenna v. Wright*, 386 F.3d 432, 436 (2d Cir. 2004))).
 14 The Amended Complaint meets that standard with ease.

15 As noted in the Amended Complaint, both Plaintiff and the Sohum-CITI team
 16 submitted bids to the USDA in pursuit of the Beech procurement. ECF No. 44 ¶¶ 109-110.
 17 Only two bidders survived the first phase of the procurement process—Plaintiff’s team and
 18 Defendants’ team. *Id.* ¶¶ 111-112. In other words, only two bidders advanced to the final
 19 round of competition, and only two teams were ultimately considered for award. *Id.* As
 20 expressly alleged in the Amended Complaint, “[b]ecause the VSolvit team and the Sohum-
 21 CITI team were the top two ranked teams for the Beech procurement, it is unmistakable that
 22 the VSolvit team contemplated by the [Teaming] Agreement[,]” which would be a team
 23 comprised of VSolvit, Sohum, and CITI, “would have won the Beech award if not for
 24 Sohum’s and CITI’s breach of their exclusivity obligations set forth in the [Teaming]
 25 Agreement.” *Id.* ¶ 113. That is a factual allegation, not a legal conclusion. Therefore, this
 26 Court must take that allegation as true. *Wilson*, 994 F.3d at 1089-90. And, alone, that
 27 allegation is sufficient to defeat Defendants’ Motion.

28

1 Defendants' flawed arguments to the contrary ignore the mandatory motion to
 2 dismiss standard of review. For instance, Defendants claim that "VSolvit cannot prove that it
 3 would have been awarded the Beech Contract in the absence of competition from Sohum
 4 . . ." ECF No. 45 at 16. However, VSolvit does not need to *prove* anything at the motion to
 5 dismiss stage. Rather, it need only *allege* sufficient facts, taken as true, to meet the elements
 6 of its cause of action. *Iqbal*, 556 U.S. at 696 (Souter, J., dissenting) ("*Twombly* does not
 7 require a court at the motion-to-dismiss stage to consider whether the factual allegations are
 8 probably true. We made it clear, on the contrary, that a court must take the allegations as
 9 true, no matter how skeptical the court may be."). Defendants also suggest that "the
 10 government could have canceled the solicitation for any reason at any time." ECF No. 45 at
 11 16. The Court cannot make the assumption, however, that the government could have
 12 canceled VSolvit's award. Such an allegation does not appear in the Amended Complaint.
 13 See generally ECF No. 44. Accordingly, making such an assumption would run directly
 14 contrary to the requirement that the Court resolve all inferences in Plaintiff's favor. *Perez*,
 15 2024 WL 1377109, at *4 (citations omitted).

16 The same fate befalls Defendants' claim that, if Defendants had participated on
 17 VSolvit's bid team, as they contracted to do, "the Agency could have and likely would have
 18 selected at least one other team to advance from phase one to phase two of the procurement,
 19 and it could have made award to that other offeror, not VSolvit." ECF No. 45 at 16. Again,
 20 Defendants encourage the Court to ignore the standard of review, ignore the well-pled facts
 21 in the Amended Complaint, and construe unpled inferences *against* Plaintiff, as opposed to
 22 *for* Plaintiff. *Wilson*, 994 F.3d at 1089-90 (facts and inferences must be construed in
 23 plaintiff's favor).

24 Defendants also argue that "[e]ven after submission of proposals, there is no
 25 guarantee that any awardee will receive award." ECF No. 45 at 17. Yet again, for the Court
 26 to adopt such an argument, it would have to construe the facts against Plaintiff and in favor
 27 of Defendant. *Wilson*, 994 F.3d at 1089-90 (facts and inferences must be considered in
 28 plaintiff's favor). The Court must disregard Defendants' arguments in this regard. See, e.g.,

1 *Fastrich v. Cont'l Gen. Ins. Co.*, 8:16CV487, 2017 WL 3610535, at *6 (D. Neb. Aug. 21,
 2 2017) (“At the pleading stage, the Court assumes the veracity of Plaintiffs’ allegation that
 3 their contracts with CGI entitled them to commissions, renewals, and overrides and that they
 4 have been deprived of that compensation by CGI.”).

5 Defendants’ citations to various cases from outside the Ninth Circuit are inapposite
 6 and unpersuasive. For instance, Defendants cite *ATL, Inc. v. United States*, 736 F.2d 677,
 7 683 (Fed. Cir. 1984), for the argument that “a citizen has no right to a Government
 8 contract.” Defendants’ Motion misleadingly omits the full context of the quote, including
 9 the critical qualifying language: “**in suspension cases** it is recognized that, although a
 10 citizen has no *right* to a Government contract, and a bidder has no constitutionally protected
 11 *property* interest in such a contract, a bidder does have a liberty interest at stake, where the
 12 suspension is based on charges of fraud and dishonesty.” *Id.* (italics in original, bold
 13 underlining added). In other words, *ATL* has no application here, because this is not a
 14 “suspension” case, *e.g.*, one where a contractor is challenging the government’s decision to
 15 prohibit it from participating in government contracting for bad behavior. *See generally id.*

16 Defendants’ reliance on *DCMS-ISA, Inc. v. United States*, 84 Fed. Cl. 501-02 (2008),
 17 also is misplaced for these proceedings. In that case, the United States Court of Federal
 18 Claims was deciding a bid protest challenging a federal agency’s decision to reject all bids
 19 and cancel a solicitation. Under the bid protest standard of review, the government has
 20 discretion to decide to reject all bids and cancel a solicitation if the procuring agency
 21 reasonably believes doing so is in the government’s best interests. *Id.* at 511. While a federal
 22 agency has discretion to cancel a solicitation, the Court cannot assume that the government
 23 would have done so in this instance. Again, that would violate the motion to dismiss
 24 standard by taking an inference (not a reasonable one) in Defendants’ favor. To the contrary,
 25 the Court must take Plaintiff’s allegation that VSolvit would have been awarded the Beech
 26 contract as true. *Wilson*, 994 F.3d at 1089-90. That factual allegation is well-supported,
 27 given that the USDA twice awarded a contract to the Sohum-CITI team before eventually
 28 canceling the solicitation; the reasonable inference that must be drawn is that the USDA

1 would have awarded the contract to the team Sohum and CITI were on again, had they met
 2 their contractual obligations. *Id.* For these reasons, Plaintiff adequately pleads causation in
 3 the Amended Complaint, and Defendants' Motion must be denied.

4 **2. Plaintiff Properly Pleads Damages**

5 Defendants close their Motion by arguing, incorrectly, that dismissal is warranted
 6 because VSolvit's damages are speculative in nature. *See generally* ECF No. 45 at 18-20.
 7 Defendants' arguments rely on inapplicable law, misapply the law in other respects, and fail
 8 to follow the motion to dismiss standard of review. For these reasons, their arguments must
 9 be rejected and their Motion denied.

10 First, Defendants suggest that, under Nevada law, "a plaintiff must prove both (1) a
 11 causal connection between the defendant's breach and the damages asserted, and (2) the
 12 amount of those damages." *Id.* at 18 (quoting *Iliescu v. Reg'l Transp. Comm'n of Washoe*
Cnty., 522 P.3d 453, 458 (Nev. 2022) (citations omitted)). This general statement of the law
 13 applies at the summary judgment and trial stage of the case, not the motion to dismiss stage.
 14 *See Iliescu*, 522 P.3d at 458 (reviewing whether trial court properly granted summary
 15 judgment in favor of defendants). Defendants also suggest that "VSolvit may not succeed
 16 based solely on speculative damages, although courts do not require 'mathematical
 17 certainty.'" ECF No. 45 at 18 (quoting *Clark Cnty. Sch. Dist. v. Richardson Constr., Inc.*,
 18 168 P.3d 87, 97 (Nev. 2007)). The case on which Defendants rely for this argument was an
 19 appeal from a jury verdict, not a case resolved at the motion to dismiss stage. Accordingly,
 20 Defendants' arguments, and their citations to inapplicable legal principles, are misplaced.

22 The motion to dismiss standard merely requires, on a breach of contract claim, that
 23 Plaintiff plausibly *allege* that it suffered damages, with the support of factual allegations.
 24 *See Petroleum Wholesale, L.P. v. Sagebrush 66 Inv. Co., Inc.*, Case No. 3:19-cv-00516-
 25 MMD-WGC, 2021 WL 5108756, at *4 (D. Nev. Aug. 23, 2021). In *Petroleum Wholesale*, a
 26 court in this district denied the defendant's motion for summary judgment challenging the
 27 plaintiff's damage allegations because the plaintiff properly alleged that it had a claim for
 28 nominal damages; attorneys' fees and costs, which were available under the parties' written
 {00204316 }

1 agreement; and actual damages from lost sales. *Id.* Those damage claims are virtually
 2 identical to the claims raised herein, and this Court should rule the same way the Court did
 3 in *Petroleum Wholesale*.

4 Defendants next argue that the measure of damages in this case will be “the
 5 difference in price between the original promise and a replacement subcontract.”
 6 *Dynalelectric Co. of Nev., Inc. v. Clark & Sullivan Constructors, Inc.*, 255 P.3d 286, 290
 7 (Nev. 2011). This argument is entirely misplaced. Indeed, the very first sentence of
 8 *Dynalelectric* shows it has no application here: “In this appeal, we address the measure of
 9 damages applicable to promissory estoppel claims.” *Id.* at 287. This is not a promissory
 10 estoppel case.

11 Contrary to Defendants’ position, the Supreme Court of Nevada has explained: “It is
 12 well established that in contract cases, compensatory damages ‘are awarded to make the
 13 aggrieved party whole and . . . should place the plaintiff in the position he would have been
 14 in had the contract not been breached.’” *Rd. & Highway Builders v. N. Nev. Rebar*, 284 P.3d
 15 377, 382 (Nev. 2012) (quoting *Hornwood v. Smith’s Food King No. 1*, 807 P.2d 208, 211
 16 (Nev. 1991)). “This includes awards for lost profits or expectancy damages.” *Id.* (citing
 17 *Colo. Env’ts v. Valley Grading*, 779 P.2d 80, 84 (Nev. 1989)). Indeed, the Court has adopted
 18 the Restatement (Second) of Contracts § 347 (1981), which states that “the injured party has
 19 a right to damages based on his expectation interest as measured by . . . the loss in value to
 20 him of the other party’s performance caused by its failure or deficiency,” in addition to “any
 21 other loss, including incidental or consequential loss, caused by the breach,” minus “any
 22 cost or other loss that he has avoided by not having to perform.” *Id.* (citations omitted).
 23 Although Defendants cite to *Road and Highway Builders*, they ignore all of this controlling
 24 law.

25 Defendants next challenge the potential manner of calculation of Plaintiff’s damages,
 26 suggesting that “there is no cost history to show what Sohum’s profits would have been, or
 27 what profits VSolvit would have earned on the same work.” ECF No. 45 at 19. On one hand,
 28 this is factually incorrect. The parties performed CITI’s PARMO contract, which would

1 have been substantially similar to the Beech contract. ECF No. 44 ¶¶ 34-44. Thus, damages
 2 could be calculated to reasonable certainty based on data related to the PARMO contract.
 3 However, regardless, Defendants' argument goes to the credibility and reliability of
 4 Plaintiff's *proof* of damages, not whether Plaintiff plausibly *pled* that it suffered damages.
 5 This Court does not make credibility or reliability determination on a motion to dismiss. *C.f.*
 6 *Innovative Media Grp., Inc. v. Beys*, Case No. 2:22-cv-1184-JCM (EJY), 2024 WL
 7 4349457, at *2 (D. Nev. Sept. 30, 2024) ("court does not make credibility determinations or
 8 weigh conflicting evidence" in resolving a summary judgment motion; rather, "it draws all
 9 inferences in the light most favorable to the nonmoving party") (citations omitted); *see also*
 10 *Iqbal*, 556 U.S. at 696 (Souter, J., dissenting) ("a court must take the allegations as true, no
 11 matter how skeptical the court may be.").

12 Finally, Defendants argue that "Nevada courts have held that '[w]here a contract
 13 provides that either party may terminate the agreement at will, the party so terminated may
 14 not recover damages for those profits he purportedly could have gained over the maximum
 15 life of the contract.'" ECF No. 45 at 20 (quoting *Dalton Props., Inc. v. Jones*, 683 P.2d 30,
 16 31 (1984)). Defendants claim that the Teaming Agreement was terminable at will, thus
 17 "VSolvit would be restricted to the award of only lost profits due to the alleged breach, but
 18 no such lost profits are recoverable for the alleged breach under Nevada law." *Id.* In this
 19 regard, Defendants misunderstand and misapply the law. The relevant contract for purposes
 20 of VSolvit's damages is not the Teaming Agreement; VSolvit's damages are calculated
 21 based on the loss of a federal government contract (Beech). ECF No. 44 ¶ 127 ("VSolvit
 22 suffered damages, including but not limited to the loss of the Beech contract and all
 23 revenues and profits associated therewith"). Federal government contracts are terminable
 24 under only certain circumstances: for default or for convenience. *See Dart Advantage*
 25 *Warehousing, Inc. v. United States*, 52 Fed. Cl. 694, 706 (2002) (describing potential
 26 manner of termination for given federal contract). In either case, the contractor would very
 27 likely receive some compensation, because some performance would take place before a
 28 termination for default, and a termination for convenience requires the government to pay

1 compensation to the contractor. 48 C.F.R. § 49.401(a) (“Termination for default is generally
 2 the exercise of the Government’s contractual right to completely or partially terminate a
 3 contract because of the contractor’s actual or anticipated failure to perform its contractual
 4 obligations” absent excuse); 48 C.F.R. § 49.201 (contractor receives payment after
 5 termination for convenience in an amount that “fairly” compensates the contractor “for the
 6 work done and the preparations made for the terminated portions of the contract, including a
 7 reasonable allowance for profit.”). Thus, even if the Court were to assume that VSolvit’s
 8 federal contract would be terminated “at will” at some point—and it would be inappropriate
 9 to do so at the motion to dismiss stage—VSolvit would nevertheless suffer damages.

10 Plaintiff has adequately pled damages sufficient to withstand Defendants’
 11 misplaced Motion. *Petroleum Wholesale*, 2021 WL 5108756, at *4, is instructive on the
 12 issue. As noted above, in that case, the defendants filed a motion for summary judgment
 13 arguing that the plaintiff “failed to show damages caused by the breach . . .” *Id.* at *3. In
 14 denying the motion, the Court explained that the plaintiff “points to various types of
 15 damages . . . that are recognized by Nevada courts as damages recoverable for breach of
 16 contract.” *Id.* at *4. For instance, the plaintiff “raises nominal damages, which the Nevada
 17 Supreme Court has found to be a viable form of damage for breach of contract claims.” *Id.*
 18 (citing *Gramanz*, 894 P.2d at 343; *Harris v. Shell Dev. Corp., Nev., Inc.*, 594 P.2d 731, 734
 19 (Nev. 1979)). Further, the plaintiff “raises attorney fees and costs, which the [parties’]
 20 Agreement explicitly awards to the prevailing party in a legal action.” *Id.* Accordingly, the
 21 Court found that “attorney fees and costs are also viable damages” on the plaintiff’s “breach
 22 of contract claim.” *Id.* And, finally, the plaintiff raises “actual damages from loss of fuel
 23 sales.” *Id.* at *5. “Nevada courts have held that compensatory damages or actual damages
 24 may be awarded in a breach of contract action ‘to make the aggrieved party whole and . . .
 25 should place the plaintiff in the position he would have been in had the contract not been
 26 breached.’” *Id.* (quoting *Hornwood*, 807 P.2d at 211). For these reasons, the Court denied
 27 the summary judgment motion. *Id.*

28

1 Here, VSolvit may recover exactly the types of damages the Court found sufficient
 2 to survive dismissal in *Petroleum Wholesale*. Specifically, VSolvit pled that it suffered
 3 actual damages “including but not limited to the loss of the Beech contract and all revenues
 4 and profits associated therewith” ECF No. 44 ¶ 127. VSolvit further alleged that it
 5 incurred attorneys’ fees and costs associated with the bid protest actions necessitated by
 6 Defendants’ breach. *Id.* ¶ 127. VSolvit also noted that it is entitled to recover attorneys’ fees
 7 and costs associated with this litigation. ECF No. 44 at 28. Those attorneys’ fees and costs
 8 are specifically recoverable under the Teaming Agreement. ECF No. 44-1 § 14.1 (“In the
 9 event that an action is commenced by either Party with respect to this Agreement, the
 10 substantially prevailing Party (as determined by the court) shall be entitled to recover its
 11 reasonable costs and attorney’s fees from the other Party.”). Finally, even if its other claims
 12 for damages fail—a question not relevant on a motion to dismiss—VSolvit will be entitled
 13 to recover nominal damages under Nevada law. *See Com. Cabinet Co., Inc. v. Mort Wallin*
 14 *of Lake Tahoe, Inc.*, 737 P.2d 515, 517 (1987) (“A plaintiff who proves a right to damages
 15 without proving the amount as well is only entitled to nominal damages.”).

16 **V. CONCLUSION**

17 For all the foregoing reasons, Plaintiff, VSolvit, LLC, respectfully requests that the
 18 Court deny Defendants’, Sohum Systems, LLC and Creative Information Technology, Inc.,
 19 Motion to Dismiss Counts I and II of the Complaint. To the extent the Court is inclined to
 20 grant the Motion in some respect, Plaintiff respectfully requests that it be permitted to file an
 21 amended complaint to further plead causation and/or damages.

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1 Dated this 18th day of October, 2024.

2
3 **MARQUIS AURBACH**

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **PLAINTIFF'S, VSOLVIT, LLC, OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT (ECF NO. 44)** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 18th day of October, 2024.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants: N/A

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